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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Vandon Jenerette,

Plaintiff,

v.

Aesculap, Inc.,

Defendant.

Case No.

COMPLAINT

(Jury Trial Demanded)

Plaintiff Vandon Jenerette, by his attorneys, Tiffany & Bosco, P.A., for his
Complaint against Defendant Aesculap, Inc., states and alleges as follows:

NATURE OF THE ACTION

This action is brought for discrimination in employment pursuant to the Americans
with Disabilities Act of 1990, 42 U.S.C. §§ 12111, et seq., and for retaliation pursuant to
42 U.S.C. § 12203. The goal is to correct unlawful disability discrimination and
retaliation as allowed by the employment practices of Defendant Aesculap, and to
provide appropriate relief in the form of compensatory and punitive damages, attorneys'
fees, and costs to Plaintiff Vandon Jenerette, who was and still is adversely affected by
such practices.

1 As alleged with greater specificity below, Vandon Jenerette was subjected to
2 disability discrimination and retaliation by his direct supervisor, Timothy Lufkin. Having
3 informed Aesculap of his mental and emotional disability, Aesculap deemed Vandon
4 Jenerette qualified for and so granted him FMLA leave and short-term disability. While
5 Vandon Jenerette was lawfully absent from work, Aesculap terminated his employment.
6 Aesculap used as a pretext for its wrongful conduct unsubstantiated allegations and
7 publicity, both of which were blatantly false, and would have been shown false had
8 Aesculap conducted an unbiased investigation – starting with interviewing Vandon.

9 JURISDICTION AND VENUE

10 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and
11 1343. This action is authorized and instituted pursuant to Title VII of the Civil Rights
12 Act of 1964 (“Title VII”), as amended, 42 U.S.C. § 2000e, et seq.; the Civil Rights Act of
13 1991, 42 U.S.C. § 1981a, 42 USC § 12101, et seq.; and 42 USC § 12203.

14 2. Defendant Aesculap, Inc., by virtue of its own acts and omissions or by
15 virtue of the acts and omissions committed by one or more of its agents, employees, or
16 representatives, as described herein, has conducted business or caused events to occur
17 within the District of Arizona and, more particularly, within Maricopa County, Arizona,
18 as more particularly described herein, so as to give rise to both subject matter and
19 personal jurisdiction of this Court.

20 3. Defendant Aesculap, Inc. regularly conducts business in this District, and
21 all or most of the events giving rise to this action, and the acts complained of herein took
22 place within, Maricopa County, Arizona. Venue of this action lies in this Court pursuant
23 to 28 U.S.C. § 1391(b) and 42 U.S.C. 2000e-5(f)(3) because the unlawful employment
24 practices giving rise to Plaintiff Vandon Jenerette’s claims occurred in this District.

25 4. Plaintiff Vandon Jenerette has fully complied with all prerequisites to
26 jurisdiction in this Court under Title VII.

PARTIES

5. Plaintiff Vandon Jenerette (“Vandon”) is a married man residing in Maricopa County, Arizona.

6. Defendant Aesculap, Inc. (“Aesculap”) is a part of the B. Braun Medical Group of Companies, and is, upon information and belief, a foreign corporation with over 500 employees, and regularly conducts business in Arizona, purposefully availing itself of the economic benefits and legal protections of Arizona.

STATEMENT OF CLAIM

7. The discriminatory conduct of Aesculap of which Vandon complains in this action includes the failure to accommodate Vandon’s disability, retaliation, and the wrongful termination of Vandon’s employment.

FACTUAL ALLEGATIONS

8. According to its website, a century ago, the progenitors of Aesculap were “medical device toolmakers, recognized as elite craftsmen whose precision, dedication and expertise in surgical equipment was infused into every surgical instrument [they] produced.” Today, it places its new instruments, innovative implants, and products in the hands of surgeons, thereby “changing patients’ lives every single day.”

9. Vandon worked for Aesculap beginning on March 31, 2005, through April 17, 2017, when his employment was wrongfully terminated. Throughout, Vandon had a history of high performance, being hand picked and promoted to multiple positions because of his high performance, loyalty, and contributions to the company across multiple departments.

10. Vandon started as a Senior Sales Representative, and was then entrusted with and promoted to Training Manager. Ten years in, Aesculap promoted him to Regional Sales Director. From 2006 up to the termination of Vandon’s employment, he was the

1 recipient of multiple sales awards, accolades, and incentive payments, even within the
2 weeks leading up to the termination of his employment.

3 11. Vandon finished 107% to quota for sales in 2015. That he was far from an
4 average worker is shown by the fact that even when he began experiencing Major
5 Depression and PTSD in 2016, he finished 106% to quota for sales for that year. On
6 March 3, 2017, he was given a Merit Increase due to his continued high performance and
7 contributions to Aesculap. Vandon's last Sales Performance Evaluation (which was
8 completed prior to the termination of his employment) and scheduled for review by
9 April 21, 2017, will confirm he both met and exceeded company objectives and standards.

10 12. Additionally, in the months and weeks prior to the termination of Vandon's
11 employment, there were absolutely no indications or evidence of any pending disciplinary
12 or corrective actions that would have suggested his performance and employment status
13 were in question.

14 13. In April 2015, Timothy Lufkin became Vandon's immediate supervisor.
15 Supervisor Lufkin continued as his supervisor when Vandon became Neuro Regional Sales
16 Director in September 2015.

17 14. At least once after becoming Vandon's supervisor, Mr. Lufkin responded to
18 an innocuous situation with Vandon with harassment, intimidation, and verbal abuse, which
19 Vandon reported to Aesculap Human Resources.

20 15. At the end of October 2016, Vandon experienced multiple traumatic events in
21 his personal life, which led to the onset of Major Depression, PTSD, and, ultimately, his
22 disability.

23 16. Vandon took emergency leave from October 31, 2016 through November 4,
24 2016, to begin to deal with the traumatic events in his personal life.

1 17. Upon Vandon's return to work on November 7, 2016, his supervisor,
2 Mr. Lufkin, called Vandon and severely reprimanded him for having missed a meeting that
3 had been held November 2nd and 3rd.

4 18. During that 10-minute-long phone conversation, Mr. Lufkin expressed his
5 suspicions of Vandon's need to take emergency leave and demanded details about the
6 nature of the traumatic events in his personal life.

7 19. Although he did not want to divulge the nature or details of the underlying
8 events or the symptoms he was experiencing as a result, Vandon felt his supervisor was
9 threatening his employment and so Vandon provided the information demanded by
10 Mr. Lufkin.

11 20. After unwillingly providing Mr. Lufkin full disclosure, Vandon was hopeful
12 that at least, it would lead to a better understanding by Mr. Lufkin of the serious nature of
13 his mental and emotional state and engender Mr. Lufkin's support for the future.

14 21. On an objective level, a reasonable manager, especially one who was
15 employed by a company in the medical field, would have been put on notice Vandon was in
16 crisis and needed help, not a reprimand and interrogation.

17 22. On a subjective level, Vandon had a reasonable expectation that his
18 supervisor for over 18 months would have respected Vandon's privacy as to the details of
19 why he needed the leave and then sought to help Vandon in any way he could within
20 company guidelines.

21 23. Instead, Mr. Lufkin seemed to double down. Vandon soon realized that not
22 only did Mr. Lufkin seem to be woefully insensitive to the traumatic events in Vandon's
23 personal life, but Mr. Lufkin acted as though he was ignorant of Vandon's emotional and
24 mental state and possible disability or potential for it.

25 24. Mr. Lufkin's message was clear. Vandon could not ask for leave regardless
26 of his emotional and mental health.

1 25. If it had not existed before, Mr. Lufkin created a hostile work environment for
2 Vandon over the course of the next several months by making demeaning, harassing, and
3 verbally abusive comments. To make his point that Vandon dare not miss any work, he
4 directed Vandon to increase his work-related travel. The increased travel limited Vandon's
5 ability to seek and engage in routine health care to address his emotional and mental health.

6 26. Through the end of 2016 and into the first several months of 2017, Vandon's
7 symptoms of Major Depression and PTSD worsened. His disability began to manifest itself
8 in both his personal life and at work. Nevertheless, based upon Mr. Lufkin's reprimand in
9 November 2016, and other demeanor, Vandon understood he could not ask for leave
10 regardless of the state of his emotional and mental health without risking his job.

11 27. By the end of March 2017, Vandon's disability had fully manifested itself in
12 both his personal and professional lives.

13 28. On or about March 24, 2017, Vandon engaged Aesculap in the interactive
14 process by calling Mrs. Christina MacDougall, Aesculap's Human Resources
15 Representative. He could not turn to Mr. Lufkin as he feared another reprimand and
16 increased retaliation. Vandon informed Mrs. MacDougall that he was experiencing mental
17 health issues, including depression, and they were severely negatively impacting his ability
18 to perform both work and normal life activities.

19 29. During his telephone conversation with Mrs. MacDougall, Vandon informed
20 her of his desire to take medical leave, thereby requesting a reasonable accommodation.

21 30. Recognizing Vandon's request as one for an accommodation based on his
22 mental health, Mrs. MacDougall directed Vandon to contact Matrix Absence Management
23 ("Matrix"), Aesculap's Short-Term Disability Plan Claims Administrator, and stated Matrix
24 would manage his medical leave and disability claim.

25 31. Aesculap, with Matrix acting on its behalf, processed Vandon's intake on
26 March 24, 2017.

1 32. Mrs. MacDougall also shared with Vandon that, to avoid the complete loss of
2 income, Vandon could take advantage of Aesculap's short-term disability benefits while on
3 medical leave.

4 33. Mrs. MacDougall also confirmed Vandon could supplement his short-term
5 disability benefits with his Paid Time Off balance to make his pay "whole" while on
6 medical leave.

7 34. Again, fearing another reprimand and retaliation from Mr. Lufkin for taking
8 leave, Vandon asked Mrs. MacDougall if he needed to inform Mr. Lufkin of his request for
9 medical leave or if she would talk with him. Mrs. MacDougall stated she would discuss his
10 request with Mr. Lufkin.

11 35. After speaking with Mrs. MacDougall, at 10:36 AM on March 27, 2017,
12 Mr. Lufkin called Vandon to discuss his medical leave. The conversation lasted 18 minutes.
13 During that conversation, Mr. Lufkin recited that he had never had one of his managers take
14 medical leave.

15 36. Although on April 13, 2017, Aesculap provided Vandon with a letter
16 approving his medical leave under the FMLA for the period of April 4 through April 21,
17 2017, Vandon believes and alleges that Mr. Lufkin was opposed to the leave and intended to
18 do what he could to avoid or end it. Vandon further believes, and therefore alleges,
19 Mr. Lufkin wanted to stop having to deal with Vandon's disabilities and absences by not
20 having Vandon return to his position after his leave ended. Vandon further believes, and
21 therefore alleges, Mr. Lufkin let his position be known to Aesculap either immediately or
22 when the opportunity described below presented itself.

23 37. On or about April 14, 2017, Aesculap learned of publicity surrounding
24 Vandon's arrest for misdemeanor charges. Already informed that Vandon's mental
25 disability had required his taking leave, Aesculap knew or should have known that the
26 matters of which Vandon was being accused were consistent with the reasons for his having

1 sought his accommodation based on disability. Abnormal and impaired decision-making
2 processes have been observed in patients with major depressive disorder and PTSD.
3 Aesculap knew or should have known that Vandon would need further accommodation to
4 deal with the many issues he was facing.

5 38. Instead of taking reasonable non-discriminatory steps, including reaching out
6 to its faithful employee of twelve years and asking whether Vandon could use any
7 assistance, Aesculap exploited the opportunity and used the circumstances of the arrest as a
8 pretext for the terminating Vandon's employment.

9 39. On April 17, 2017, while Vandon was still on medical leave, Aesculap
10 terminated Vandon's employment. It did so via an email message received by Vandon
11 while he was enjoying the benefits provided by law in the form of the supposed reasonable
12 accommodation that had been provided him. Had Vandon known of the possibility that his
13 employment was at risk, he would have contacted Aesculap before termination to engage in
14 an interactive process to reach a reasonable accommodation moving forward.

15 40. The termination of Vandon's employment was supposedly "... for legitimate
16 business reasons including a pattern of poor judgment as well as the impact on the
17 reputation of the organization." Unquestionably, the alleged legitimate business reasons
18 given were vague and, because Aesculap provided no further details to support its
19 ambiguous reasoning.

20 41. By short-circuiting the process, Aesculap intentionally denied Vandon the
21 opportunity to ask for, much less have the parties engage in, an interactive process before
22 the wrongful termination. The quick, unilateral firing not only prevented Vandon from
23 engaging in a good faith, real time, two-way conversation with the three individuals who
24 were deciding the fate of his employment status: Mr. Lufkin, a Senior VP, and the Director
25 of Human Resources, but allowed Aesculap to avoid a good faith interactive process
26 altogether.

1 42. After the firing, Aesculap denied multiple requests from Vandon to discuss, in
2 good faith, how the termination of his employment had been made in a vacuum, without
3 Vandon's being able contribute to the manner in which he could continue performing the
4 essential functions of his job. When fired, Vandon was using the accommodation Aesculap
5 had offered (short-term disability). With the termination, that accommodation evaporated
6 without any interactive process or hope for any substitute. In denying Vandon the
7 opportunity to meet, not only did Aesculap fail a second time to engage in a good faith
8 interactive process, it refused to do so.

9 43. Rather than terminating Vandon's employment for a "pattern of poor
10 judgement," Aesculap, in fact, terminated it because of Vandon's disability and in
11 retaliation for his having availed himself of a lawful accommodation.

12 44. Matrix, acting on the behalf of Aesculap, conducted a thorough and
13 independent review of Vandon's clinical condition to include documents and interviews
14 with Vandon's treating health care providers. The reviewers, Dr. Eric M. Chavez, MD –
15 Psychiatrist, and Dr. Jeremy B. Hertz, PsyD, supported the findings of psychiatric and
16 functional impairments from April 4, 2017 to June 26, 2017.

17 45. Aesculap's alleged legitimate business reasons are pretextual as evidenced by:

- 18 a. The temporal proximity of Aesculap's adverse employment action to
19 Vandon's protected activity.
- 20 b. Aesculap offered several misleading and false statements to the EEOC
21 in both Respondent's Position Statement and the reply to the EEOC
22 Investigator's Request for Additional Information.
 - 23 i. Aesculap egregiously claimed Vandon "never requested nor
24 was he denied a reasonable accommodation" and Aesculap "did
25 not even know that Charging Party was disabled." Undeniably,
26 Aesculap engaged in the interactive process with Vandon in
March 2017, and implemented an accommodation by directing

1 him to contact and work with its short-term disability plan
2 administrator, and offering to supplement his short-term
3 disability insurance payments with his Paid Time Off balance.

4 ii. Aesculap also claims it substantiated allegations made against
5 Vandon by a subordinate. But in Aesculap's letter to Vandon
6 dated August 15, 2016 regarding the allegations, Aesculap
7 states: (1) "We were unable to corroborate the allegations
8 regarding the Data Access issues," (2) "We were not able to
9 make any findings the allegations related to Management were
10 based on any unlawful conduct," and (with regard to Private
11 Personnel Information), and (3) "We have not been able to
12 locate any data indicating that you requested information
13 outside of typical scope during the on-boarding process." Thus,
14 none of the subordinate's allegations was substantiated.

15 c. Aesculap alleges Vandon violated the company Workplace Violence
16 Policy; yet, it failed to investigate the conduct in question and failed to
17 follow company policy, which states, "All reports made to Human
18 Resources will be investigated" and "Aesculap will take further
19 appropriate action once the report has been thoroughly investigated."

20 d. Upon learning of Vandon's claims of disability discrimination and
21 retaliation in May 2017, Aesculap also failed to investigate his
22 complaint and failed to follow company policy which states, "The
23 Company using qualified personnel will promptly and objectively
24 conduct an investigation of all complaints which provides all parties
25 appropriate due process and reaches reasonable conclusions based on
26 the evidence collected. The investigation will typically include
interviews with the complaining party, the alleged harasser and

1 potential witnesses who can offer relevant information about the
2 complaint.”

3 46. The Phoenix Municipal Court Veterans Court found the behaviors that led to
4 Vandon’s arrest stemmed from his conditions of Major Depression and PTSD.

5 47. The Phoenix Municipal Court Veterans Court dismissed all charges against
6 Vandon resulting from his arrest. In spite of the publicity of his arrest on April 11, 2017, to
7 this day, Vandon’s innocence remains unchallenged.

8 48. In discriminating against Vandon, Aesculap acted with conscious disregard
9 (either with malice or with reckless indifference) for Vandon’s rights and is liable under
10 42 U.S.C. § 1981a for punitive damages in the amount necessary to punish Aesculap for its
11 discrimination and to dissuade those similarly situated from other like future conduct.

12 **EXHAUSTION OF FEDERAL ADMINISTRATIVE REMEDIES**

13 49. Vandon filed a charge with the Equal Employment Opportunity Commission
14 with respect to the claims asserted herein on January 16, 2018.

15 50. The Equal Employment Opportunity Commission issued a Notice of Right to
16 Sue letter, dated February 1, 2019, which Vandon received on February 5, 2019. A copy of
17 the Notice of the Right to Sue is attached as Exhibit 1.

18 **DAMAGES**

19 51. As a direct and proximate result of the breach of Vandon’s rights, Vandon
20 sustained and continues to sustain economic and non-economic injuries, including, but
21 not limited to, loss of income – back and front pay, benefits, emotional pain and distress,
22 future pecuniary losses, suffering, inconvenience, mental anguish, loss of enjoyment of
23 life, and other nonpecuniary losses, and is entitled to compensatory and punitive damages
24 for the harm created by Aesculap’s unlawful acts.

25 . . .

26 . . .

PRAYER FOR RELIEF

WHEREFORE, Vandon respectfully requests that judgment be entered in his favor against Defendant Aesculap:

A. Declaring that Aesculap has violated Title VII of the Civil Rights Act of 1964, as amended;

B. Directing Aesculap to take such affirmative action as is necessary to ensure that the effects of its unlawful employment practices are eliminated and do not continue to affect the employment or employment opportunities of Vandon and others;

C. Providing Vandon with compensation and benefits he otherwise would have enjoyed through employment;

D. Awarding Vandon compensation for lost and future wages and benefits, including pre-judgment and post-judgment interest;

E. Awarding Vandon all economic and non-economic damages;

F. Awarding Vandon special damages to be proven at trial;

G. Awarding Vandon punitive or exemplary damages to be proven at trial;

H. Awarding Vandon pre-judgment and post-judgment interest;

I. Awarding Vandon attorneys' fees and costs; and

J. Directing such other and further relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

Vandon hereby requests that, upon trial of this action, all issues be submitted to and determined by a jury except those issues expressly reserved by law for determination by the Court.

RESPECTFULLY SUBMITTED this 3rd day of May, 2019.

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